IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971

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No. 70-74

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PIPEFITTERS LOCAL UNION NO. 562, ET AL., *Petitioners*

v.

UNITED STATES OF AMERICA

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**On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

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## PETITIONERS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM AFTER ARGUMENT

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Pursuant to the provision of Rule 41(5) & (6) of the Rules of this Court, Petitioners hereby move for leave to file a supplemental memorandum after argument to bring to the Court's attention § 205 of Public Law 92-225 (the Federal Election Campaign Act of 1971),

which was passed by Congress on January 19, 1972, and was signed into law by the President February 7, 1972. In support of this motion Petitioners show as follows:

1. The prosecution which is the subject matter of the instant case was brought under 18 U.S.C. § 610.

2. Section 205 of Public Law 92-225 amends § 610. Representative Orville Hansen, the sponsor of this amendment, stated that its "purpose and effect . . . is to codify and clarify the existing law . . . [and to write] currently accepted practices into clear and explicit statutory language." App. pp. 16a, 21a.[1]

3. Thus § 205 of Public Law 92-225 is "a later statute *in pari materia*" which "throws a cross light upon" the earlier enactment before the Court (L. Hand, J., in *U.S.* v. *Aluminum Corp. of America,* 148 F.2nd 416, 429 (C.A. 2) followed in *Michigan National Bank* v. *Michigan,* 365 U.S. 467, 481), and which is, for that reason, worthy of the Court's consideration. Compare *NLRB* v. *Local 639, Teamsters (Curtis Bros.)*, 362 U.S. 274, 291-292; *NLRB* v. *Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 194.

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[1] For the convenience of the Court, the Appendix to the accompanying Memorandum contains: the text of § 205 of Public Law 92-225 (App. p. 1a); Representative Hansen's preliminary explanation of his amendment to 18 U.S.C. § 610 (App. p. 2a); Representative Hansen's floor explanation of his amendment delivered at the time it was debated and voted upon in the House (App. p. 4a); the relevant portion of the Conference Committee Report (App. p. 14a); and Representative Hansen's additional explanation of his amendment delivered during the floor debate on the Conference Committee Report (App. p. 15a).

## CONCLUSION

For the above stated reasons the Petitioners' motion for leave to file a supplemental memorandum after argument should be granted.

Respectfully submitted,

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February 17, 1972

IN THE

# Supreme Court of the United States

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## PETITIONERS' SUPPLEMENTAL MEMORANDUM

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Although the Government has shifted its position many times throughout the course of this prosecution, its basic theory before this Court now appears to proceed from the premise that in enacting 18 U.S.C. § 610 Congress intended to prohibit unions from utilizing

dues moneys for making federal political contributions and expenditures, and acknowledges that an essential element of the Government's case was that payments to the Pipefitters Voluntary etc. Fund "were assessed by the union as part of its dues structure". Brief for the United States, p. 23. But the jury instructions directed the jury to return a verdict of guilty if it concluded that the Fund was not "separate and distinct from the union", and even if it concluded that "the payments into the fund [had] been made voluntarily by some or even all of the contributors". A. 1113; 1093. Thus, the instructions embodied the view that § 610 absolutely prohibits federal political contributions by unions, and that proof justifying the jury to conclude that the Fund, which admittedly made contributions, and the Union, were a single entity (by, in effect, "piercing the corporate veil"), was sufficient to sustain a conviction.[1]

This was plain error. In enacting § 610, Congress did not intend to prohibit all union political contributions; its aim was simply to prohibit contributions

[1] Because the instructions embodied this view, the District Court refused an instruction (AA) requested by the Petitioners which correctly stated the law:

> "The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for political office. The law merely prohibits union dues or assessments from being used for such purposes. Therefore, if you find that contributions made to the political, educational, legislative, charitable or defense fund were made by members of Local 562 voluntarily and did not constitute the payment of union dues or assessments, you must find the defendants not guilty." A. 1097-1098.

See also the other requested instructions set out in Pet. Br. pp. 72-73, n. 21.

financed by union dues. As Senator Taft advised the Senate, under § 610

> "'unions can . . . organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for [the] purpose [of making federal political expenditures and contributions].'" 93 Cong. Rec. 6440.

Congress' intent in this regard has now been reaffirmed. Section 205 of Public Law 92-225 adds the following to the original language of § 610:

> "As used in this section, the phrase 'contribution or expenditure' . . . shall not include . . . the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: PROVIDED, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisals; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction." App. p. 1a.

As shown by the legislative history of § 205 of Public Law 92-225, Congress added the foregoing statutory language, not to change the law, but "to codify and clarify the existing law . . . [and to write] currently accepted practices into clear and explicit statutory language." App. pp. 16a, 20a.

Given the clarity with which Congress has manifested its will, the point of § 610, and of this Memorandum,

can be summarized by answering a question asked by the Court in the oral argument. As we recall, Mr. Justice Stewart inquired whether § 610 would be violated if he (or presumably any other individual who has not been coerced) gave a union $50,000 to be used by the union to make federal political contributions and the union accepted the money and made the contributions. Government counsel equivocated, but as the Government's brief stated "We do not question 'that a union could establish a political organization for the purpose of receiving ear-marked political monies directly from [voluntary contributions of] union members'." Brief for the United States, p. 30. Thus, both at the time it was posed and today, § 610 required the conclusion that there could be no violation in the hypothetical situation envisaged by Mr. Justice Stewart.

Since the jury instructions misstated the essential elements of a § 610 offense by advising the jury that a union could *not* accept and utilize such donations without violating the law, it follows that the convictions must be reversed. *Screws* v. *United States,* 325 U.S. 91, 107.[2]

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[2] In light of the limited scope of § 610, it cannot be argued, as the Government has, that Congress wished to prohibit even noncoercive union solicitation of political donations. The language of § 205 of Public Law 92-225 demonstrates that Congress does not share the Justice Department's view that "the union-worker relationship is peculiarly susceptible of undue influence." Brief for the United States, p. 38. See also App. p. 13a.

## CONCLUSION

For the foregoing reasons as well as those stated in Petitioner's opening brief, and in the AFL-CIO's brief *amicus,* the convictions should be reversed.

Respectfully submitted,

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